

City of Kent confident state Supreme Court will uphold medical marijuana ban

by STEVE HUNTER
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A city of Kent deputy attorney remains confident the state Supreme Court will uphold Kent's ban on medical marijuana collective gardens.

Pat Fitzpatrick argued the city's case in front of the Supreme Court on Feb. 24 in Olympia. The court agreed last year to review earlier decisions by the state Court of Appeals and King County Superior Court to affirm the city's authority to prohibit medical marijuana collective gardens from operating in Kent.

The Seattle-based Cannabis Action Coalition filed the initial lawsuit against the city in June 2012 in an effort to prohibit the city from enforcing its ban on collective gardens because the state regulates medical marijuana collectives, and cities cannot enforce federal law over state medical marijuana laws. The group has appealed each of the earlier court decisions.

"I am confident the Supreme Court will agree with the superior and appellate courts that cities have the authority to prohibit business that are established to distribute medical cannabis," Fitzpatrick said in an email after the oral arguments. "A city is in the best position to determine which land uses are most appropriate for its jurisdiction. The Legislature recognized this when it passed the Medical Cannabis Act and the Superior Court and Court of Appeals agreed that cities may prohibit medical cannabis businesses."

David Mann, a Seattle attorney representing Deryck Tsang, who owns a Kent medical marijuana collective garden and also is a plaintiff in the lawsuit, told the Supreme Court that the city cannot ban medical marijuana collective gardens.

"We don't think there is authority to regulate or to ban outright," Mann said to the justices. "In the grand scheme, the Legislature intended to allow collective gardens."

The Supreme Court isn't expected to make a ruling for at least several months.

"I would anticipate the Court's decision will be issued in four months to a year," Fitzpatrick said.

The Kent City Council voted 4-3 in 2012 to approve an ordinance to ban medical cannabis collective gardens. That decision immediately triggered a lawsuit by the Cannabis Action Coalition and the case of Steve Sarich v. the city of Kent. Sarich delivered a copy of the lawsuit to Mayor Suzette Cooke the night the council passed the ban.

Fitzpatrick said the primary issue centers on the land-use rights of cities.

"We are prosecuting the use of land - not the collective garden - but the use of property in violation of the city zoning code," he said during his oral arguments. "Just as if someone put an auto building company in a residential location, we would not prosecute for building cars but for using land in a manner inconsistent with our zoning and that's a very important enforcement for cities because we have the authority to enforce the regulations. It would be meaningless to have a code enforcement and not be able to enforce."

Fitzpatrick said the city code makes clear that medical marijuana collective gardens are banned.

"The only question is whether they are violating the zoning code," he said. "We're banning the use of property to engage in the use of collective garden. Our ordinance defines it. Mr. Tsang's primary use is to conduct a business of a collective garden."

Mann argued a collective garden serves what legislators intended under the Medical Cannabis Act.

"If someone is operating a collective garden and is selling to outside people it's a way for patients to share resources," Mann said. "We don't want people to have to have their own grows but allow them to get together in a location and share resources."

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